

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN
RAILROAD, INC., a Corporation,

Plaintiff,

vs.

AMERICUS C. MITCHELL, JR.,
an Individual,

Defendant.

CASE NO. 2:06cv3-B

MOTION FOR LEAVE TO AMEND ANSWER

NOW COMES **AMERICUS C. MITCHELL, JR.**, the defendant herein, by and through his attorneys, and respectfully requests that this Honorable Court grant the defendant leave to amend its answer under Rule 15(a) of the *Federal Rules of Civil Procedure* to plead as a defense that the plaintiff is not the real party in interest, and, for reason, states as follows:

1. During the deposition of the plaintiff's FRCP 30(b)(6) corporate representative on August 25, 2006, it was discovered that the Georgia Southwestern Railroad, Inc. operates the railroad line at issue by virtue of a lease agreement with another railroad company, and, therefore, does not hold legal title to the railroad trestle at issue.

(*Dep. of T. Small, pp. 3, 7, 8*)

2. Thus, the Georgia Southwestern Railroad is not the real party in interest to bring this action as required by Rule 17(a) of the *Federal Rules of Civil Procedure*.

3. The failure to prosecute this action in the name of the real party in interest could subject this defendant to duplicative exposure, and/or inconsistent outcomes.

WHEREFORE, THE PREMISES CONSIDERED, this defendant respectfully requests this Honorable Court to allow leave to amend its answer to reflect as a defense that this action has not been prosecuted in the name of the real party in interest.

Respectfully submitted,



DAVID E. ALLRED
D. CRAIG ALLRED
Attorneys for Above-Named Defendant

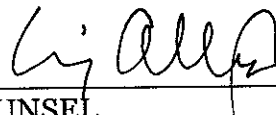
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CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of September, 2006 filed the foregoing *Motion for Leave to Amend Answer* with the Clerk of the Court for the United States District Court for the Middle District of Alabama, Northern Division, using the CM/ECF system, which will send notification of such filing to:

Adrian D. Johnson, Esq.
PARNELL & CRUM, P.A.
Post Office Box 2189
Montgomery, Alabama 36102-2189



OF COUNSEL